

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA



**FILED**  
10-18-16  
04:59 PM

Robert Meijer,

Complainant,

C1610009

vs.

Sprint Telephony PCS, LP (U3064C),

Defendant.

Complaint  
(Rule 4.2)

**PART 2 OF 3 PARTS**

**(ATTACHMENT 1)**

COMPLAINANT	DEFENDANT
Robert S. Meijer 9052 Geraldine Place San Diego CA 92123 T-619-602-7250 Email: <a href="mailto:Major_Monitors@Sprynet.com">Major_Monitors@Sprynet.com</a>	Sprint Telephony PCS, LP Attn: Stephen Kukta, Director, State Regulatory 201 Mission Street, Suite 1500 San Francisco CA 94105 T1-415-572-8358 T2-415-684-7316 Email: <a href="mailto:stephen.h.kukta@sprint.com">stephen.h.kukta@sprint.com</a>



BEFORE THE PUBLIC UTILITIES COMMISSION OF **FILED**  
THE STATE OF CALIFORNIA

12-18-09  
04:59 PM

Utility Consumers' Action Network (UCAN),

Complainant,

vs.

Sprint Telephony PCS, L.P. (U-3064-C) )  
dba Sprint PCS, aka Sprint Spectrum L.P., )  
aka Sprint Nextel, aka Wireless L.P. (U-3062-C), )  
and related entities collectively "Sprint,"

Defendant.

C.08-08-026

**JOINT MOTION OF UCAN AND SPRINT FOR  
APPROVAL OF SETTLEMENT AGREEMENT**

ART NEILL  
MICHAEL SHAMES  
3100 Fifth Ave. Suite B  
San Diego, CA 92103  
Phone: 619-696-6966  
Fax: (619) 696-7477  
Email: [art@ucan.org](mailto:art@ucan.org)  
*Attorneys for Utility Consumers' Action Network*

Stephen H. Kukta  
Kristin L. Jacobson  
Sprint  
200 Mission Street. Suite 1500  
San Francisco, CA 94105  
Telephone: (415) 572-8358  
Facsimile: (415) 278-5303  
Email: [stephen.h.kukta@sprint.com](mailto:stephen.h.kukta@sprint.com)

Earl Nicholas Selby  
Law Offices of Earl Nicholas Selby  
530 Lytton Avenue, 2nd Floor  
Palo Alto, CA 94301  
Telephone: (650) 323-0990  
Facsimile: (650) 325-9041  
Email: [ens@loens.com](mailto:ens@loens.com)

*Attorneys for Sprint*

December 18, 2009

RECEIVED OFFICE

2016 SEP 23 AM

STATE OF CALIFORNIA  
PUC  
RECEIVED

Pursuant to Rule 12.1 of the Commission's Rules of Practice and Procedure, Sprint Spectrum, L.P. as agent for WirelessCo., L.P. (U 3062 C) and Sprint Telephony PCS, L.P. (U 3064 C) d/b/a Sprint PCS ("Sprint") and Utility Consumers' Action Network ("UCAN") respectfully submit this joint motion for Commission approval of the proposed uncontested settlement agreement (variously referred to herein as the "Settlement Agreement," "Settlement" or "Agreement") which resolves all issues in California Public Utilities Commission ("Commission") Case No. C. 08-08-026 ("Complaint"). A copy of the Agreement is attached to this filing as Attachment A.

This motion contains a statement of the factual and legal considerations regarding the scope of the Settlement and the grounds on which UCAN and Sprint seek the Commission's approval of the Agreement. The parties believe that the Agreement meets the Commission's criteria for approval of all party settlements; and that it is reasonable in light of the whole record, consistent with law and in the public interest. The parties urge the Commission to grant this joint motion and approve the Agreement.

#### **I. BACKGROUND AND PROCEDURAL HISTORY**

On August 25, 2008, UCAN filed a Complaint alleging that Sprint violated Public Utilities Code sections 2890, 2896, and 451 and General Order 168 for unauthorized charges and billing errors relating to the Sprint Pioneer Plans. On October 16, 2008 Sprint filed a motion for a Prehearing Conference prior to Sprint's filing of an Answer. On October 21, 2008 the parties jointly proposed a schedule to the Administrative Law Judge. On October 31, 2008, ALJ Bushey adopted the proposed schedule. Sprint filed an Answer on November 6, 2008, in which, *inter alia*, Sprint denied the allegations of UCAN's Complaint, denied that UCAN was entitled to the relief prayed for, and requested that UCAN take nothing by its Complaint.

The parties then engaged in a round of discovery. On December 17, 2008 the parties met for a Prehearing Conference at the Commission in San Francisco. Following the Prehearing Conference, the parties continued to engage in discovery and held multiple discussions concerning the information that Sprint had provided to UCAN. The parties then initiated settlement discussions and continued such discussions until a settlement agreement was reached

that resolved the issues raised in the Complaint. The attached Agreement is the result of extensive and creative settlement discussions held between the parties where the interests of Sprint Pioneer Plan / Free and Clear 0 ("FC0") Plan customers ("customers") were made paramount. The results are billing and customer service system changes, as well as credits, refunds, and additional benefits to customers that resolve the issues in the Complaint. The Settlement ensures that customers will not be charged Administrative or Regulatory Charges or other charges that Sprint erroneously imposed in a transition to a new billing system, while at the same time allowing Sprint to update and improve its billing and customer service systems for these long time subscribers.

The Agreement expressly states that the parties have entered into the Settlement as a compromise of disputed claims, and that the terms of the Agreement are not to be construed as an admission of liability on the part of Sprint, which expressly denies any liability. The Agreement also provides that nothing in the Settlement may be deemed as an admission by Sprint of any allegation in the Complaint, or as a concession by UCAN that its claims were without substantial merit, and that the Agreement is entered into solely for the purposes of settling pending litigation. Finally, the Agreement provides that both parties will actively cooperate in seeking the Commission's approval of the Agreement without modification. If the Agreement is modified by the Commission in any respect, either Sprint or UCAN may, in its sole discretion, declare the Agreement void *ab initio* and request renegotiation.

## **II. SCOPE AND SUMMARY OF SETTLEMENT AGREEMENT**

Under the Agreement, Sprint agrees to correct, credit, and refund for billing errors; account to UCAN regarding the total credits and refunds that Sprint has provided to customers to correct billing errors that occurred during the 2007 to 2009 period; compensate FC0 Plan customers for any inconvenience due to the billing errors; clarify its billing procedures and certain terms and conditions for the FC0 Plan; and notify customers of certain rights and privileges as Sprint FC0 Plan customers pursuant to the Settlement. Specifically Sprint has agreed to:

1. Provide credits and refunds to Sprint FC0 Plan customers, and make associated billing and customer service system changes to address the following billing errors: Administrative and Regulatory Charge; long distance calling; call rounding; early termination fee; reactivation/reconnection; call forwarding; and text messages. The preliminary total of credits and refunds provided to customers for these billing errors are as follows:
  - a. Administrative and Regulatory Charge - \$199,877.27
  - b. Long distance calling - \$194,881.61
  - c. Call rounding - \$18,541.75
  - d. Early termination fee - \$82,082.83
  - e. Reactivation / reconnection - \$21,925.83
  - f. Call forwarding - \$3,972.18
  - g. Text messages - \$0.20<sup>1</sup>
2. Compensate FC0 plan customers with a credit for 25 minutes of usage per month for 12 months for any inconvenience caused to them by the billing errors.
3. Ensure that customers who are not sent a bill due to their balance being less than \$4.51 are only sent a standard FC0 billing statement when the amount due exceeds \$4.51.
4. Notice all FC0 customers of the continued existence of the FC0 plan and provide six months to all FC0 customers to inform Sprint if they wish to continue or reactivate their FC0 account.
5. Allow FC0 customers to migrate to other Sprint service plans without contract renewal or subjection to an early termination fee, as well as to terminate service without an early termination fee.
6. Provide UCAN with not less than 20 monthly billing statements for inspection demonstrating Sprint has corrected the above-mentioned billing errors.

---

<sup>1</sup> As a courtesy, Sprint refunded \$0.20 to a customer who UCAN alleged had been erroneously charged for an unsolicited commercial text message originated by Sprint. Sprint denies that such customer, or any other customer, was charged for any unsolicited commercial text messages originated by Sprint.

7. Provide UCAN with a preliminary and final accounting of all credits and refunds for billing errors provided by Sprint to FC0 customers.

The parties also agree to a mutual release of all claims, whether known or unknown, arising out of the facts and/or allegations that are the subject of the Complaint. UCAN further agrees to notify Sprint of any alleged breach of the Agreement and to provide Sprint with an opportunity to cure such alleged breach, before filing a complaint for breach of the Agreement.

### **III. THE SETTLEMENT AGREEMENT IS REASONABLE, CONSISTENT WITH LAW, AND IN THE PUBLIC INTEREST**

The parties respectfully submit that the Agreement is consistent with the law, reasonable in light of the record as a whole, and in the public interest as required by Rule 12.1(d). The billing and customer service system corrections that Sprint has committed to make are consistent with California Public Utilities Code Sections 2890, 2896, and 451 and General Order 168.

UCAN alleged that Sprint customers on the Pioneer Plans were being charged unauthorized charges and incurring unexpected changes to the status of their accounts. The proceeding revealed that Sprint's new billing system coupled with its transition, in 2007 to 2008, of Pioneer Plan customers to Sprint's FC0 Plan on Sprint's new national billing system resulted in various billing errors to those customers. The agreement addresses these concerns by (1) correcting the billing errors to FC0 customers, (2) crediting or refunding those customers who received unauthorized charges due to the billing error, with total estimated credits and refunds preliminarily estimated at \$521,281.67, (3) providing notice to the customers of the transition to the FC0 plan, the difficulties incurred, the corrections implemented, and the differences in the FC0 plan, (4) providing former customers with the opportunity to reactivate their FC0 Plan account if service was terminated during the transition period, and (5) allowing customers dissatisfied with the changes to transition to a new plan or terminate their current plan without incurring an early termination fee.

Approval of the Agreement is in the best interest of the public because it ensures that customers who have been customers of Sprint or its predecessor-in-interest since 1996/1997 on the Pioneer and FC0 Plans will not be subjected to charges that are inconsistent with

representations made by Sprint's predecessor-in-interest regarding the Pioneer Plans, while also allowing Sprint to update and improve its billing system. Moreover, this Agreement provides an efficient resolution of all disputes at issue in this Complaint, avoiding the need for additional litigation. In this way, approval of the Agreement will preserve the resources of the Commission and the parties.

**IV. THIS SETTLEMENT AGREEMENT COMPLIES WITH RULE 12.1(b) OF  
THE COMMISSION'S RULES OF PRACTICE AND PROCEDURE**

UCAN and Sprint are the only two parties to this proceeding. As such, all parties to the proceeding fully participated in all discussions that gave rise to the Agreement. All parties in this proceeding join in this motion requesting approval of the Agreement. Accordingly, the parties submit that there is no need for a settlement conference pursuant to Rule 12.1(b).

**V. CONCLUSION**

For the foregoing reasons, the parties urge the Commission to grant this Joint Motion and approve the Agreement.

Dated this 18<sup>th</sup> day of December 2009.

[signature page follows]

Respectfully Submitted,

/S/ Arthur H. Neill

---

Arthur H. Neill  
Michael Shames  
*Attorneys for Utility Consumers' Action Network*  
3100 Fifth Ave. Suite B  
San Diego, CA 92103  
Phone: 619-696-6966  
Fax: (619) 696-7477  
Email: [art@ucan.org](mailto:art@ucan.org)  
*Attorneys for Utility Consumers' Action Network*

/S/ Earl Nicholas Selby

---

Stephen H. Kukta  
Kristin L. Jacobson  
Sprint  
200 Mission Street. Suite 1500  
San Francisco, CA 94105  
Telephone: (415) 572-8358  
Facsimile: (415) 278-5303  
Email: [stephen.h.kukta@sprint.com](mailto:stephen.h.kukta@sprint.com)

Earl Nicholas Selby  
Law Offices of Earl Nicholas Selby  
530 Lytton Avenue, 2nd Floor  
Palo Alto, CA 94301  
Telephone: (650) 323-0990  
Facsimile: (650) 325-9041  
Email: [ens@loens.com](mailto:ens@loens.com)

Attorneys for Sprint



**ATTACHMENT A**

## SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT ("Agreement") is between Sprint Spectrum, L.P. as agent for WirelessCo, L.P. (U 3062 C) and Sprint Telephony PCS, L.P. (U 3064 C) d/b/a Sprint PCS (hereinafter, "Sprint") and the Utility Consumers' Action Network ("UCAN") and is effective as of the date it is approved by the California Public Utilities Commission ("CPUC" or "Commission") in Case 08-08-026. This Agreement contains the entire agreement between Sprint and UCAN for settlement and dismissal of Case 08-08-026 at the CPUC and supersedes all prior discussions, negotiations, and agreements, if any, whether oral or in writing, with respect to the entire subject matter of Case 08-08-026 and the matters addressed herein.

### Recitals

WHEREAS on or about August 25, 2008, UCAN filed a Complaint against Sprint in Case 08-08-026 at the CPUC ("Complaint");

WHEREAS on or about November 6, 2008, Sprint filed its Answer to UCAN's Complaint at the CPUC ("Answer");

WHEREAS on or about September 15, 2007, Sprint began to move all of its customer base of approximately 50 million customers nationwide to a new billing platform known as the "Ensemble" billing system;

WHEREAS in late 2007 and 2008, in connection with moving customers to the "Ensemble" billing system, Sprint moved approximately 20,000 customers from five legacy billing plans in San Diego, CA known as the "Pioneer" plans, to the new "Free and Clear 0 Plan;"

WHEREAS UCAN brought several billing errors to Sprint's attention and Sprint has determined that certain billing errors may have occurred both before and after the "Pioneer" customers were moved to the "Free and Clear 0 Plan;"

WHEREAS Sprint has corrected many, and will correct all, of these billing errors;

WHEREAS Sprint and UCAN have devoted many hours and diligent efforts to resolve all of the matters raised by UCAN's Complaint and Sprint's Answer;

WHEREAS Sprint and UCAN wish to forever resolve and settle all of the matters raised by UCAN's Complaint and Sprint's Answer by entering into this Agreement on the terms and conditions set forth herein;

AND WHEREAS, in consideration of the mutual promises and undertakings set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Sprint and UCAN wish to enter into this Agreement, to present this Agreement to the Commission for the Commission's approval, and to provide for final settlement and resolution of Case 08-08-026 at the CPUC;

### Definitions

- A. "Agreement" means this Settlement Agreement.
- B. "Administrative Charge" means the charge first assessed by Sprint beginning January 1, 2008, called "Administrative Charge."
- C. "Billing Errors" means the following billing errors by Sprint: Administrative and Regulatory Charge Billing Errors, Long Distance Calling Billing Errors, Call Rounding Billing Errors, Early Termination Fee Billing Errors, Reactivation / Reconnection Billing Errors, and Call Forwarding Billing Errors.
- D. "Credits and Refunds" means the payment by Sprint by credit to accounts of Free and Clear 0 Plan customers with an open account and the payment by Sprint by check to accounts of former Free and Clear 0 Plan or Pioneer Plan customers whose accounts have been closed and fully paid.
- E. "Free and Clear 0 Plan" means the current name of service/billing plan offered by Sprint to "Pioneer Plan" customers when Sprint transitioned to the "Ensemble" billing system.
- F. "Pioneer Plan" means the following service/billing plans: Association Pioneer Plan, Business Pioneer Plan, San Diego Plan, Cox Communications Corp. Plan, and Super Bowl 32 Plan.
- G. "Regulatory Charge" means the charge first assessed by Sprint beginning January 1, 2008, called "Regulatory Charge."
- H. "Settlement" means this Settlement Agreement.
- I. "Taxes and Surcharges" means any local, state or federal fees, taxes or surcharges that Sprint may have collected from any Sprint customer in connection with the billing errors identified in this Agreement.

NOW, THEREFORE, Sprint and UCAN agree as follows:

1. Credits and Refunds for Billing Errors: As specified in this Agreement, Sprint has provided or will provide credits or refunds to all customers who (a) on or after September 15, 2007, were or are either Pioneer Plan customers or Free and Clear 0 Plan customers (hereinafter, such Pioneer/Free and Clear 0 Plan customers are referred to as "FC0 Plan customers") and (b) suffered one or more of the billing errors identified in this Agreement, provided, however, that Sprint shall have the right to offset against any credits or refunds owed to FC0 Plan customers any amounts owed by such customers to Sprint, including any amounts for which any such customer is delinquent.

2. Accounting for Billing Errors/Escheats for Unclaimed Refunds: Sprint will provide UCAN with a preliminary and a final accounting of all credits and refunds provided by Sprint to FC0 Plan customers for billing errors identified in this Agreement. The preliminary accounting is set forth in Exhibit A to this Agreement. If any refund for any billing errors identified in this Agreement remains unclaimed after it was issued by Sprint, the amount of such refund will escheat pursuant to applicable law. Sprint will identify the total amount of then-existing unclaimed refunds in its final accounting to UCAN for the billing errors identified in this Agreement. Sprint will complete the process of providing credits and refunds to all current and former FC0 Plan customers, and will provide the final accounting to UCAN, within 180 days of the effective date of this Agreement. The final accounting will identify the number of customers affected by each of the billing errors identified in this Agreement. The final accounting will be included in this Agreement by reference as Exhibit B. Sprint's preliminary and final accounting will be provided on a best efforts/good faith basis by Sprint. However, due to: (a) the passage of time since Sprint began to migrate Pioneer customers to the Free and Clear 0 Plan, (b) the institution of a new billing system, (c) the difficulty of accessing records in the no-longer-used former billing system, and (d) the possibility that customers may have obtained corrections of billing errors through dealing directly with Sprint customer service representatives, Sprint does not represent that the preliminary and final accountings provide or will provide the exact number of customers affected by different billing errors or the exact total number or amount of credits or refunds it has provided to such customers. Likewise, although Sprint believes that, pursuant to this Agreement, it will have provided or attempted to provide in good faith all credits and refunds that it knows or believes are owed to current and former FC0 Plan customers, Sprint does not represent that there is no possibility that it might have failed to provide credits or refunds to customers to whom credits or refunds were owed. In the event that, subsequent to this Agreement, UCAN or a current or former FC0 Plan customer claims that he or she is entitled to a credit or refund that was not provided to such customer, such claim will be subject to the provisions of Section 16 of this Agreement.
3. Credits and Refunds for Administrative and Regulatory Charge Billing Errors: Sprint has provided or will provide credits or refunds for all Administrative and Regulatory Charges that were erroneously billed to FC0 Plan customers by Sprint between January 1, 2008 (the date when Sprint began assessing such Charges) and the effective date of this Agreement. Sprint has made and will make system and/or operational changes to ensure that that Administrative and Regulatory Charges, as well as other basic monthly charges, are not erroneously billed to FC0 Plan customers in the future.
4. Long Distance Calling Billing Errors: Sprint has provided credits or refunds to all FC0 Plan customers and former Pioneer Plan customers for all long distance calling charges, dating from January 1, 2005 to May 4, 2008. After the effective date of this Agreement, Sprint will include long distance calling as part of the \$0.35 per minute rate for FC0 Plan customers. Thus, Sprint will provide domestic long distance calling for FC0 Plan customers at no extra charge (*i.e.*, at no charge above the \$0.35 per

minute rate for FC0 Plan customers) for domestic calls made from within the United States (including Puerto Rico and the U.S. Virgin Islands) to numbers/phones (either landline or mobile) located within the United States (including Puerto Rico and the U.S. Virgin Islands). This provision is set forth in the statement regarding modified terms and conditions of Free and Clear 0 Plan Service attached as Exhibit E.

5. Call Rounding Billing Errors: Sprint will provide credits or refunds to all FC0 Plan customers for all charges that were erroneously billed to them by Sprint due to call rounding errors (*i.e.*, rounding calls on a 60-second basis rather than on a 30-second basis) that occurred between September 15, 2007 and October 1, 2008 (the date when all FC0 Plan customers were given 30-second call rounding). Sprint estimates, and for the purposes of this Agreement UCAN accepts, that approximately 3,341 customers may have been affected by such call rounding errors (this is number of Pioneer Plan customers who were not on the San Diego Plan but who Sprint believes may have been affected by such call rounding errors). It is understood and agreed by Sprint and UCAN that credits or refunds to FC0 Plan customers for call rounding errors will be based on an estimate of erroneous billing, not on the exact amount of erroneous charges. Sprint will utilize the following methodology to calculate the amount of credits or refunds owed to customers whose accounts may have been affected by call rounding errors: Sprint will start with the amount of revenue billed to each customer, then divide that amount by \$0.35 to determine the number of billed minutes. The number of billed minutes will then be divided by the total minutes of usage on the customer's bill in order to determine the percentage of minutes of usage that were billed minutes. The percentage of billed minutes will then be multiplied by the number of calls made in order to identify the number of calls eligible for credit or refund. Each call eligible for a credit or refund will receive a 17¢ credit or refund. On a going-forward basis, starting from October 1, 2008, Sprint has provided and will continue to provide 30-second call rounding to all FC0 Plan customers, including those Pioneer Plan customers whose Pioneer Plan (the San Diego Plan) originally provided for 60-second call rounding. This provision is set forth in the statement regarding modified terms and conditions of Free and Clear 0 Plan Service attached as Exhibit E.
6. Early Termination Fee Billing Errors: Sprint has provided or will provide credits or refunds to all FC0 Plan customers for all billing errors that caused Early Termination Fees to be erroneously billed to such customers by Sprint from September 15, 2007 to the effective date of this Agreement.
7. Reactivation / Reconnection Billing Errors: Sprint has provided or will provide credits or refunds to FC0 Plan customers who incurred charges for reactivation / reconnection onto the FC0 Plan from September 15, 2007 to the effective date of this Agreement. Any former FC0 customer who ceased to be a FC0 Plan customer on or after November 19, 2008, and who seeks to again become a FC0 Plan customer within six months following the effective date of this Agreement, may reactivate his or her account as an FC0 Plan customer without incurring reactivation / reconnection fees or charges, provided, however, that such former FC0 Plan customer may only



reclaim the phone number(s) assigned to such account if the phone number(s) have not been reassigned to another customer.

8. Call Forwarding Billing Errors: In order to correct any billing errors that may have occurred in connection with billing for incoming calls that were forwarded by FC0 Plan customers, Sprint has provided or will provide credits or refunds to any FC0 Plan customers who were assessed any charges for having forwarded calls, during the period from September 15, 2007 to the effective date of this Agreement. However, subsequent to the effective date of this Agreement, Sprint will begin charging all FC0 Plan customers a rate of \$0.20 per minute for all call forwarding usage. The charge of \$0.20 per minute for all call forwarding usage after the effective date of this Agreement will be applied regardless of the number, either landline or mobile, to which an incoming call is forwarded, and regardless of any Sprint calling plan "add-ons" that may otherwise apply including, but not limited to, "free nights and weekends" and "free mobile to mobile" calling plan "add-ons," and will be applied in lieu of any other charge for such usage that would otherwise apply (thus, for example, the otherwise applicable charge of \$0.35 per minute for an incoming call will not apply). Sprint will provide all FC0 Plan customers with not less than 30-days advance notice in writing of the \$0.20 per minute charge for all call forwarding usage. The call forwarding feature can only be used to forward domestic calls made from within the United States (including Puerto Rico and the U.S. Virgin Islands) to numbers/phones (either landline or mobile) physically located within the United States (including Puerto Rico and the U.S. Virgin Islands). This provision is set forth in the statement regarding modified terms and conditions of Free and Clear 0 Plan Service attached as Exhibit E.
9. Text Messages: Sprint will provide credits to any FC0 Plan customer for any erroneously charged text messages, if any erroneously billed text message charges are brought to Sprint's attention, but Sprint does not believe that the text message billing described in the Complaint for the customer identified in the Complaint was erroneous. While Sprint has issued goodwill credits to the customer identified in the Complaint who claimed to have been erroneously billed for text messages, no further action is required to settle this issue.
10. Compensation to FC0 Plan Customers: To compensate FC0 Plan customers for inconvenience they may have incurred due to billing errors identified herein, Sprint will provide then current FC0 Plan customers with a credit for 25 minutes of usage per month for a 12-month period that begins one month after the effective date of this Agreement. The credits will be offered on a "use it or lose it" basis, *i.e.*, the credits will not accumulate or "roll over" from month to month. Such credits will not be transferable and cannot be exchanged for monetary value under any circumstances. Such credits will apply to calls that would normally be billed. If a customer has any Sprint calling plan "add-ons" on their accounts, (such as the "free nights and weekends" or "free mobile-to-mobile" calling plan "add-ons") those buckets would be used prior to the 25 minute credit. Such credits will apply to either domestic inbound calls or outbound calls. For outbound calls, such credits will only be

provided for domestic calls made from within the United States (including Puerto Rico and the U.S. Virgin Islands) to numbers/phones (either landline or mobile) physically located within the United States (including Puerto Rico and the U.S. Virgin Islands). Calls outside of the United States will be billed appropriate international rates. The 12-month period applies to all present and former FC0 Plan customers, regardless of the time when they may rejoin the FC0 Plan or begin to use their phones after the start of the 12-month period (examples: a former FC0 Plan customer rejoins the FC0 Plan in the seventh month after the start of the 12-month period – such customer will have a credit of 25 minutes of usage per month for that month and the following five calendar months only; a current FC0 Plan customer uses his phone for the first time in the sixth month after the start of the 12-month period – such customer will have a credit of 25 minutes per month for that month and the following six calendar months only). This provision is set forth in the statement regarding modified terms and conditions of Free and Clear 0 Plan Service attached as Exhibit E.

11. No Bill Sent if Balance Due is Less than \$4.51: Sprint will continue to not send a bill to FC0 Plan customers if the amount owed by such customers is less than \$4.51 at the conclusion of any billing period. Sprint has made or will make such operational and billing system changes as are necessary to ensure that FC0 Plan customers are not charged activation, reconnection, early termination or similar fees due to Sprint's not having sent a bill to such FC0 Plan customers. Sprint has made or will make such operational and billing system changes as are necessary to ensure that, when the cumulative balance due and owing by a FC0 Plan customer is greater than \$4.51 at the conclusion of any billing period, FC0 Plan customers will receive a standard FC0 Plan billing statement, rather than a collection notice, notice of termination or threatened termination, or notice that payment is overdue or in arrears. When an FC0 Plan customer has not been sent a bill in prior months, the customer will not have call detail for those prior months on the bill that is mailed (*i.e.*, if it is a multiple month bill). However, an FC0 Plan customer may obtain such detail by contacting a Sprint customer care representative or by going on-line to view the call detail. This provision is set forth in the statement regarding modified terms and conditions of Free and Clear 0 Plan Service attached as Exhibit E.
12. Inspection of Customer Bills: Sprint will provide UCAN, within 180 days after the effective date of this Agreement, with an opportunity to inspect not less than 20 monthly billing statements of FC0 Plan customers, selected at random and redacted by Sprint, that demonstrate Sprint has corrected each of the billing errors identified in Sections 3 through 8 of this Agreement. At least five billing statements will demonstrate the manner in which Sprint is billing for long distance calls, at least five billing statements will demonstrate the manner in which Sprint is billing for call forwarded calls, and at least five billing statements will demonstrate that Sprint is billing on the basis of 30-second call rounding. Such billing statements will also demonstrate that Sprint is not assessing Administrative and Regulatory Charges, Early Termination Fees, or reactivation / reconnection fees or charges in violation of this Agreement.

13. Closing of Accounts with No Usage and No Response: Subject to the provisions of this Section, Sprint will close the accounts of any FC0 Plan customers who (a) had no usage in their accounts in the 12-month period prior to April 15, 2009 (hereinafter, "no-usage customers") and (b) were sent, but who did not respond to, two written notices sent by Sprint prior to the date hereof that requested such customers to contact Sprint if they wished their FC0 Plan accounts to remain open (hereinafter, "no-usage/no-response customers"). For purposes of this Section, if an FC0 Plan customer has multiple phones on the Free and Clear 0 Plan, if any of those phones have usage in the past 12 months, that FC0 Plan customer will not be considered a "no-usage/no-response customer." Although Sprint had planned to close the accounts of no-usage/no-response customers as of October 1, 2009, Sprint agrees that, unless requested to do so by any such customer or unless any such customer fails to pay Sprint for charges then due and owing, Sprint will not close the account of any no-usage/no-response customer prior to, and for a period of six months after, the effective date of this Agreement. Within two weeks after the effective date of this Agreement, Sprint will send the no-usage/no response customers the notice described in Section 15 of this Agreement as "Notice A." If any no-usage/no-response customer thereafter fails to contact Sprint within the six-month period indicated in Notice A, such customer's account may thereafter be closed by Sprint without further notice. Further, Sprint will honor the request of any no-usage or no-usage/no-response customer who has requested or who prior to the effective date of this Agreement requests to remain a FC0 Plan customer, whether or not such request was made within the time identified in the two written notices previously sent by Sprint to no-usage customers. Following the effective date of this Agreement, Sprint may, but shall not be required to, audit its FC0 Plan customer accounts on an annual basis and terminate accounts with no usage during the prior 12 months without further notice to such customers. The notices described in Section 15 of this Agreement as Notice A and Notice B will notify FC0 Plan customers regarding Sprint's intention to audit and close without further notice the accounts of customers with no usage during the preceding 12 months.
14. Notice A and Notice B: Sprint will send a notice disclosing certain terms of this Agreement to all persons who, as of November 19, 2008 or any time thereafter, were FC0 Plan customers, whether or not such persons are, as of the mailing thereof, still FC0 Plan customers. Sprint will send Notice A to all no-usage/no response customers; Sprint will send Notice B to all other FC0 Plan customers. Notice A and Notice B are attached to this Agreement as Exhibits C and D, respectively.
15. Continued Offering of the Free and Clear 0 Plan: Sprint will continue offering the Free and Clear 0 Plan to FC0 Plan customers, including former FC0 Plan customers who exercise the option to again become FC0 Plan customers, provided, however, that: (a) this Agreement shall not be construed as affecting or limiting such rights as Sprint may have, if any, to discontinue offering the Free and Clear 0 Plan and (b) this Agreement shall not be construed as an agreement by UCAN that Sprint has any rights to discontinue offering the Free and Clear 0 Plan.



16. Notice of and Opportunity to Cure Any Future Billing Errors: UCAN acknowledges that FC0 Plan customers, due to the unique nature of the FC0 Plan relative to modern wireless service plans, are at increased risk of being affected by future changes to Sprint's billing system. If UCAN believes that a breach of the Settlement has occurred, it will notify Sprint of the potential breach and provide Sprint with a reasonable opportunity to promptly investigate such claim and, if required, cure such breach before filing any complaint with the Commission. Any complaint filed for breach of this Agreement must be filed with the Commission, which all parties hereto agree shall have jurisdiction to enforce the terms hereof. Sprint will provide UCAN with a designated point of contact for all issues and complaints regarding the Free and Clear 0 Plan, including but not limited to any complaints regarding possible billing errors. If the point of contact changes, Sprint will promptly notify UCAN regarding the new point of contact.
17. Migration to Different Sprint Nextel Plan: Sprint will permit any FC0 Plan customer to migrate to any other then available wireless service plan offered by Sprint or Nextel, subject to the rates, terms and conditions of such plan as then and thereafter observed and in effect for such plan, provided, however, that any such migrated customer shall not be subject to a minimum term or Early Termination Fee if such customer elects to discontinue service on such plan.
18. Waiver and Release of All Claims and of Protections of California Civil Code Section 1542: The parties to this Agreement waive and release all claims, both known and unknown, against each other as of the effective date of this Agreement, arising out of or connected with the matters or facts alleged, or set forth in the Complaint filed in C. 08-08-026 at the CPUC relating to billing errors and taxes and surcharges charged to Sprint Free & Clear 0 customers. This waiver and release includes, without limitation, any and all claims, both known and unknown, relating to any and all billing errors, whether or not identified in the Complaint, involving any and all Free and Clear 0 Plan customers, whether or not identified in the Complaint, by Sprint prior to December 31, 2009. The parties to this Agreement waive the protections of California Civil Code Section 1542, which provides as follows:

**"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."**

Excepting only the obligations imposed by this Agreement, UCAN and Sprint shall, and by operation of the Commission's approval of this Agreement, do, forever relieve, release and discharge each party and its respective successors, assigns, attorneys, accountants, insurers, representatives, affiliates, parents, partners, officers, directors, stockholders, employees, and agents, and each of them, from any and all

claims, debts, liabilities, demands, obligations, promises, acts, agreements, costs, and expenses (including but not limited to attorneys' fees other than those ordered by the Commission), damages, actions, causes of action and claims for relief (referred to hereafter collectively as "claims") of whatever kind or nature, under any theory, whether legal, equitable or other, under the law, either common, constitutional, statutory, administrative, regulatory, or other, of any jurisdiction, foreign or domestic, whether such claims are known or unknown, suspected or unsuspected, arising out of, connected with, or incidental to the matters or facts alleged, or set forth in the Complaint filed in C.08-08-026 at the CPUC. UCAN and Sprint expressly waive and release any right or benefit which they have or may have under California Civil Code Section 1542 to the full extent that they may waive all such rights and benefits pertaining to the matters released herein. In connection with such waiver and relinquishment, UCAN and Sprint acknowledge that they are each aware that they may hereafter discover claims presently unknown or unsuspected, or facts in addition to or different from those which they now know or believe to be true, with respect to the matters released herein. Nevertheless, it is the intention of UCAN and Sprint, by this Agreement, and with advice of counsel (or the opportunity to receive advice of counsel), fully, finally, and forever to settle and release all such matters, and all claims relative thereto, which do now exist, may exist, or heretofore have existed between the parties, to the extent set forth within this Agreement. In furtherance of such intention, the release herein given shall be and remain in effect as a full and complete release of such matters notwithstanding the discovery or existence of any such additional different claims or facts relative to the matters released. This is an essential term of this Agreement without which there would have been no settlement.

Excepting only obligations imposed by this Agreement, Sprint shall, and by operation of the Commission's approval of this Agreement does, forever relieve, release, and discharge UCAN and UCAN's Counsel from any and all claims arising out of the investigation, initiation, litigation, prosecution and resolution of the Complaint, including, without limitation, claims for malicious prosecution, negligence, and abuse of process.

19. Dismissal with Prejudice of Case No. 08-08-026: Upon mutual execution of this Agreement, UCAN and Sprint shall jointly request approval of this Agreement by the Commission. The Parties agree to actively support prompt approval of this Settlement, including briefing, comments on any proposed decision, written and oral testimony if necessary, appearances, and other means as may be needed to obtain the necessary approval of the Commission. The Parties further agree to actively, cooperatively, and in good faith defend this Settlement if opposed by others. In the event that this Agreement is not approved by the Commission or is otherwise cancelled in accordance with its terms, or the settlement set forth in this Agreement is otherwise canceled or terminated or fails to become effective in accordance with its terms, it shall become null and void and shall have no further force and effect. In such an event, neither this Agreement (including any and all of its provisions and the exhibits hereto), nor any drafts hereof, nor any of the negotiations and proceedings

relating hereto: (i) shall be offered, received in evidence or otherwise used in the CPUC proceeding C.08-08-026 or in any other action or proceedings for any purpose, or (ii) shall prejudice the rights of any of the parties hereto, who shall be restored to their respective positions immediately prior to the execution of this Agreement, and any monies previously paid pursuant to the terms of this Agreement shall be either returned or withdrawn, as appropriate.

20. Enforcement of this Agreement: Each signatory may seek to enforce the terms of this Agreement at the Commission after first providing notice and reasonable opportunity to cure any claimed failure to comply with the terms of this Agreement.
21. Exhibit with Statement of Rates, Terms and Conditions of the Free and Clear 0 Plan Modified Pursuant to this Settlement. Exhibit E identifies the rates, terms and conditions applicable to the Free and Clear 0 Plan that are being modified pursuant to this Agreement. Sprint will include a copy of Exhibit E when it mails Notice A and Notice B to FC0 Plan customers. Further, Sprint will include the provisions of Exhibit E in its Knowledge Management System so that Sprint's customer service representatives have access thereto.
22. Entire Agreement: This Agreement sets forth the entire agreement between Sprint and UCAN and each signatory to this Agreement, and supersedes all prior discussions, negotiations and agreements, if any, whether oral or written, with respect to the entire subject matter of Case 08-08-026 and the matters addressed herein.
23. Applicable Law: This Agreement shall be interpreted and enforced under California law, without regard to its conflict of laws provisions and/or principles.
24. Representations and Warranties:
  - (a) No Undisclosed Principals: Each of the signatories to this Agreement represents and warrants to the other signatories that no other person, firm, corporation, estate, or entity has had or now has any interest in any of the claims released herein.
  - (b) No Prior Assignments or Transfers: Each of the signatories to this Agreement further represents and warrants to the other signatories that it has not assigned or transferred, or purported to assign or transfer, to any person, firm, corporation, estate, insurance carrier, or other entity whatsoever any claim, controversy, right, promise, debt, liability, demand, obligation, cost, expense, action, or cause of action herein released or purported to be released.
  - (c) Warranty of Authority: In executing this Agreement, each of the signatories to this Agreement further represents and warrants that they have the authority to bind their respective principals, and that those principals have the right and authority to compromise, settle, release and discharge all of the claims released herein.

(d) No Statements or Representations: Each of the signatories to this Agreement further represents and warrants that no party has made any statement or representation to the other party, except as expressly stated in this Agreement, regarding any fact relied upon by any other party in entering into this Agreement, and each party does not rely upon any statement, representation, or promise of any other party in executing this Agreement, or in making the settlement provided for herein, except as expressly stated in this Agreement. There have been no other agreements or understandings between the parties hereto, or any of them, relating to the disputes referred to in this Agreement, except as expressly stated in this Agreement.

(e) Adequate Independent Investigation. Each of the signatories to this Agreement further represents and warrants that it has made its own independent investigation of the facts pertaining to this settlement and this Agreement, and all of the matters pertaining thereto, as each party deems necessary, adequate and sufficient to enter into this settlement and this Agreement, taking into full account the merits, uncertainty, risk, difficulties, delays, and expense inherent in litigation.

(f) No Agreements or Understandings. Each of the signatories to this Agreement further represents and warrants that there have been no other agreements or understandings between the parties hereto, or any of them, relating to the disputes and matters referred to in this Agreement, except as expressly stated in this Agreement.

(g) Terms Are Contractual. Each of the signatories to this Agreement further represents and warrants that the terms of this Agreement, without limitation, are contractual, not a mere recital, and are the results of negotiations among all of the parties hereto.

(h) Free and Voluntary Signing. Each of the signatories to this Agreement further represents and warrants that this Agreement has been carefully read by, the contents hereof are known and understood by, and it is signed freely and voluntarily by each person executing this Agreement.

(i) Assumption of Risk and Finality of Agreement. Each of the signatories to this Agreement further represents and warrants that, except for those representations and promises that form this Agreement, in entering into this Agreement and the settlement provided for herein, the parties, and each of them, recognize that no facts or representations are ever absolutely certain; accordingly, each party hereto assumes the risk of any misrepresentation, concealment or mistake, and if any party should subsequently discover that any fact it relied upon in entering into this Agreement was untrue, or that any fact was concealed from any party hereto, or that any understanding of the facts or of the laws was incorrect, such party shall not be entitled to set aside this Agreement, or any of the releases contained herein, by reason thereof. Nor shall it affect the releases. This Agreement is intended to be final and binding between all parties regardless of any claims of fraud, misrepresentation, promise made without the intention of performing it, concealment of fact, mistake of fact or



law, or any other circumstances whatsoever. Each party relies on the finality of this Agreement as a material factor inducing that party's execution of this Agreement.

(j) Promise Not to Interfere with Performance. Each of the signatories to this Agreement further represents and warrants that each party hereto agrees that such party will not take any action which would interfere with the performance of this Agreement by any of the parties hereto or which would adversely affect any of the rights provided for herein.

(k) Promise Not to Bring any Claim. Each of the signatories to this Agreement further represents and warrants that each party hereto agrees not to bring any claim, action, suit, or proceeding against any party hereto, directly or indirectly, regarding or related in any manner to the matters released hereby, and that each party further agrees that this Agreement is a bar to any such claim, action, suit, or proceeding.

(l) Indemnity Against Breach of Warranty: Each of the signatories to this Agreement agree that any signatory who is in breach of any of the foregoing representations or warranties shall indemnify and forever hold the other signatories harmless against all claims and liabilities, including reasonable attorneys' fees and costs incurred in connection therewith, which arise out of such breach.

25. Written Modifications Only: The terms of this Agreement shall not be modified or amended except in writing, signed by all signatories.

26. Time is of the Essence: Time is of the essence in this Agreement.

27. Multiple Originals and Counterparts: This Agreement shall be executed in multiple originals, with each signatory to retain a fully-executed original. This Agreement may be executed in counterparts, which when taken together shall constitute one binding Agreement. Facsimile or scanned signatures shall be considered as binding as original signatures.

28. Severability: If one or more of the provisions of this Agreement is determined to be illegal or unenforceable, the remainder of this Agreement shall not be affected thereby and each remaining provision or portion thereof shall continue to be valid and effective and shall be enforceable to the fullest extent permitted by law.

29. Interpretation; Miscellaneous: Both Sprint and UCAN have cooperated in the drafting of this Agreement, therefore, the interpretation of this Agreement shall be without regard to which party or signatory is the "drafting party," and the signatories waive the benefit of any law providing otherwise. This Agreement shall be binding on each signatory's respective heirs, successors and assigns. Section references used in this Agreement refer to sections in this Agreement and are for reference purposes only. Underscored section headings in this Agreement are for the convenience of the parties and shall not affect interpretation of or be used to interpret this Agreement.

30. Agreement Void if Modified by the Commission: Each provision of this Agreement is a material provision and all provisions hereof are material to each other. Both UCAN and Sprint shall therefore urge the Commission to approve this Agreement without modification. If this Agreement is modified by the Commission in any respect, either Sprint or UCAN may, in its sole discretion, declare this Agreement void *ab initio* and request renegotiation hereof. Neither UCAN nor Sprint shall request or support (a) the imposition of any obligation that is not identified in this Agreement or (b) the imposition of any penalty, fine or sanction of any nature or kind whatsoever, it being understood that the each of the obligations set forth herein materially affected Sprint's and UCAN's willingness to compromise, settle and resolve Case 08-08-026 and the matters identified in this Agreement.
31. No Admission of Liability; Inadmissibility: It is understood and agreed that this Agreement is the compromise of disputed claims, and that the terms of this Agreement are not to be construed as an admission of liability on the part of Sprint, which expressly denies any liability. Nothing in this Settlement shall be deemed as an admission by Sprint of any allegation in the Complaint, or a concession by UCAN that its claims were without substantial merit. This Agreement is entered into solely for the purposes of settling pending litigation. The terms of this Agreement shall not be admissible in any arbitration, litigation, or other proceedings, whether regulatory or judicial, for any purpose, except as required to enforce this Agreement.
32. No Settlement Fund or Common Fund: By this Settlement, no settlement fund or common fund is created or implied, and there shall be no unpaid residual whether under California Code of Civil Procedure Section 384 or any other statutory or case authority.
33. Advice of Counsel: Each of the parties to this Agreement represents and warrants that it has engaged separate and independent legal counsel to review all matters with respect to this Agreement, or have been advised of their right to do so and have elected to proceed without counsel. All parties whose counsel have signed below represent and warrant that they have been fully advised by said attorneys with respect to: the form and substance of this Agreement, their rights with respect to the execution of this Agreement, and all matters which are subject to the mutual releases contained herein. All parties whose counsel have signed below represent and warrant that they have read this Agreement and understand the terms thereof.
34. Notice: Sprint may notify UCAN regarding any matter pertaining to this Agreement by email to Art Neill, Esq. at: [art@ucan.org](mailto:art@ucan.org) or Michael Shames, Esq. at: [mshames@ucan.org](mailto:mshames@ucan.org). UCAN and any signatory to this Agreement other than UCAN may notify Sprint regarding any matter pertaining to this Agreement by email to Stephen H. Kukta, Esq. at: [Stephen.H.Kukta@Sprint.com](mailto:Stephen.H.Kukta@Sprint.com). If the signatory notified does not first confirm receipt within 24 hours, receipt of any such notice by email shall be confirmed by telephone call to the signatory notified.

UCAN

**SPRINT SPECTRUM L.P.** as agent for  
WirelessCo, L.P. (U 3062 C) and  
Sprint Telephony PCS, L.P. (U 3064 C)

/S/ Arthur H. Neill

Signature

/S/ Stephen H. Kukta

Signature

Arthur H. Neill

Printed Name

Stephen H. Kukta

Printed Name

Attorney for UCAN

Title

Senior Counsel and Director

Title

December 18, 2009

Date

December 18, 2009

Date

**APPROVAL AS TO FORM:**

**COUNSEL FOR UCAN**

**COUNSEL FOR SPRINT SPECTRUM  
L.P.**

/S/ Arthur H. Neill

Signature

/S/ Stephen H. Kukta

Signature

Arthur H. Neill

Printed Name

Stephen H. Kukta

Printed Name

Attorney for UCAN

Title

Attorney for Sprint

Title

December 18, 2009

Date

December 18, 2009

Date